

### **REMARKS**

Claims 9-12 and 18 were previously allowed. Claims 1-8, 13-17, and 19-25 have been canceled. Claims 9-12 and 18 are pending.

#### ***Disclaimers Relating to Claim Interpretation and Prosecution History Estoppel***

Claims 1-8, 13-17, and 19-25 have been canceled, notwithstanding the belief that these claims were allowable. The right to pursue the canceled claims in a continuation application is reserved.

Any reference herein to “the invention” is intended to refer to the specific claim or claims being addressed herein. The claims of this application are intended to stand on their own and are not to be read in light of the prosecution history of any related or unrelated patent or patent application. Furthermore, no arguments in any prosecution history relate to any claim in this application, except for arguments specifically directed to the claim.

#### ***Priority***

An English-language translation of Provisional application No 60/492,869, along with a statement that the translation is accurate, have been filed coincident with this reply.

#### ***Objection to the Specification***

The specification was objected to because of 220 instances of the word “may”. The Examiner contends that the proliferation of the word “may” renders the specification vague and unclear. However, the Examiner did not identify any specific passages which he considered vague or unclear. This objection is respectfully traversed.

Recent court decisions (e.g., *Johnson Worldwide Associates Inc. v. Zebco Corp.*, 175 F.3d at 993, 50 USPQ2d at 1613; *Gentry Gallery, Inc. v. Berkline Corp.*, 134 F.3d at 1479, 45 USPQ2d at 1503; *Tronzo v. Biomet*, 156 F.3d at 1159, 47 USPQ2d at 1833) have created a doctrine that unconditional descriptions in the specification can be construed to limit or define

terms in the claims. To ensure that the claims stand on their own, patent practitioners have taken to using the conditional term “may” to allow for the possibility of alternatives. Conditional is not at all the same as indefinite.

In making the objection, the Examiner cited no authority, and the undersigned knows of no basis in the law, rules or MPEP for making such an objection. The adequacy of the specification under 35 USC 112 §1 is discussed in MPEP 2163. Section 2163(III)(A) reads, in part, as follows:

“A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). The examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97.”

It is respectfully submitted that a person skilled in the art would have no difficulty understanding the description of the invention provided in the specification. The specification clearly describes embodiments and also allows for alternatives and modifications. Withdrawal of the objection is requested.

### ***Conclusion***

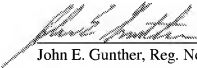
It is respectfully submitted that the present application is now in condition for allowance. Reconsideration and reexamination are respectfully requested and allowance at an early date is solicited.

Appl. No. 10/782,281  
Amdt. Dated 11/28/2006  
Response to Office action dated 6/30/2006

The Examiner is invited to call the undersigned to answer any questions or to discuss steps necessary for placing the application in condition for allowance.

Respectfully submitted,

Date: November 28, 2006

  
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